

**THIS DECISION HAS BEEN APPEALED. THE
FOLLOWING IS THE RELATED SOAH DECISION NUMBER:**

SOAH DOCKET NO. 453-03-3322.M4

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

I. DISPUTE

1. a. Whether there should be additional reimbursement for dates of service 10-23-01 through 12-7-01.
- b. The request was received on 5-21-02.

II. EXHIBITS

1. Requestor, Exhibit I:
 - a. TWCC 60 and Letter Requesting Dispute Resolution
 - b. HCFA(s)
 - c. EOBs
 - d. Medical Records
 - e. Example EOBs from other Carriers
 - f. Requestor study survey indicating previous Carriers' reimbursement for CPT Code 97799-CP-AP.
 - g. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
2. Respondent, Exhibit II:
 - a. TWCC 60 and Response to a Request for Dispute Resolution
 - b. Example EOBs
 - c. Methodology
 - d. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
3. Per Rule 133.307 (g) (3), the Division forwarded a copy of the requestor's 14 day response to the insurance carrier on 7-19-02. Per Rule 133.307 (g) (4), the carrier representative signed for the copy on 7-22-02. The response from the insurance carrier was received in the Division on 7-26-02. Based on 133.307 (i) the insurance carrier's response is timely.

4. Notice of Additional Information submitted by Requestor is reflected as Exhibit III of the Commission's case file.

III. PARTIES' POSITIONS

1. Requestor: Letter dated 7-10-02

“(Requestor's) position is that the fees paid for these services by the carrier were not ‘fair and reasonable.’ Evidence supporting our position is offered in the following 4 points:

1. Examples of what other insurance companies reimbursed (Requestor) for CPT 97799-CPAP during the service dates....
2. ...Attachment #2 breaks down the daily treatment activities of injured employee and assigns a CPT code with a MAR....
3. (Requestor) is also enclosing a study it conducted in 2001...More of the insurance companies paid \$175 than any other single fee. In fact, 16 insurance companies paid \$175 for CPT 97799-CPAP....
3. Recent decisions by TWCC's Medical Dispute Resolution Officers also supports (Requestor's) position that \$175 per hour for CPT 97799 is a fair and reasonable fee (see attachment #4)....
4. Finally, (Requestor's) assertion that its fees are fair and reasonable has been upheld in a recent SOAH decision (see attachment #5).”

2. Respondent: Letter dated 7-24-02

“Pain management programs are structured to provide coordinated, goal-oriented, interdisciplinary team services to reduce pain, improve functioning and decrease the dependence on the health care system. (Carrier) reimburses these services at a fair and reasonable rate of \$125 per hour for an accredited provider and \$100.00 for a non-CARF accredited facility. This is the result of extensive review of all identifiable Chronic Pain Management Programs across the state of Texas. All contacted providers found our consistent reimbursement of \$125 per hour to be acceptable. From information obtained from these providers, a ‘standard’ CPM program was identified and evaluated at a ‘per modality’ rate according to the Texas Fee Guidelines. Based upon that review, the per hour reimbursement would be \$116.00. Our \$125 rate allows an additional \$9.00 per hour to cover the cost of Medical Management, Case Coordination, etc. Attached documentation illustrates our consistent reimbursement of this rate. Examples also show other providers who bill at this ‘fair and reasonable’ rate and those who do bill more accept our consistent reimbursement of the determined rate. Due to human error, payments are sometimes inadvertently issued for payment of the full charge or are calculated improperly. These instances are addressed as they are discovered with corrections made as needed and noted in the claim file.”

IV. FINDINGS

1. Based on Commission Rule 133.307(d) (1) (2), the only dates of service eligible for review are those commencing on 10-23-01 and extending through 12-7-1-01.

2. This decision is being written based on the documentation that was in the file at the time it was assigned to this Medical Dispute Resolution Officer.
3. Per the Requestor's Table of Disputed Services, the Requestor billed the Carrier \$40,425.00 for services rendered on the above dates in dispute.
4. Per the Requestor's Table of Disputed Services, the Carrier paid the Requestor \$28,875.00 for services rendered on the above dates in dispute.
5. Per the Requestor's Table of Disputed Services, the amount in dispute is \$11,550.00 for services rendered on the above dates in dispute.
6. The Carrier's EOBs deny additional reimbursement as "M Z436 (F) CHRONIC PAIN MANAGEMENT; F Z335 (F) ACCREDITED INTERDISCIPLINARY PROGRAM; F Z560 THE CHARGE FOR THIS PROCEDURE EXCEEDS THE FEE SCHEDULE OR USUAL AND CUSTOMARY VALUES AS ESTABLISHED BY (auditor). M REDUCED TO FAIR AND REASONABLE; F REDUCTION ACCORDING TO MEDICAL FEE GUIDELINES."

V. RATIONALE

Medical Review Division's rationale:

The Requestor has billed CPT code 97799-CP-AP, which is a DOP (no MAR) per the MFG. The MFG reimbursement requirements for DOP states, "An MAR is listed for each code excluding documentation of procedure (DOP) codes... HCPs shall bill their usual and customary charges. The insurance carrier will reimburse the lesser of the billed charge, or the MAR. CPT codes for which no reimbursement is listed (DOP) shall be reimbursed at the fair and reasonable rate."

The carrier has reimbursed the provider at \$125.00 per hour for Chronic Pain Management. The Provider has billed \$175.00 per hr. CPT Code 97799-CP is reimbursed at fair and reasonable. The Medical Review Division has reviewed the file to determine which party has provided the most persuasive evidence of what is fair and reasonable. The provider has submitted additional reimbursement data that includes: example EOBs for charges billed for similar services, along with a list that breaks down the daily treatment activities of injured employees and assigns a CPT code with a MAR. Also included was a study of what other carriers were paying for the CPT Code in dispute as well as copies of recent decisions by Medical Dispute Resolution and the State Office of Administrative Hearings.

The carrier asserts that they have paid a fair and reasonable reimbursement and have submitted a methodology plus example EOBs reflecting payments ranging from \$100.00 to \$125.00 per hour that have been accepted by other providers. Per Rule 133.304 (i), "When the insurance carrier pays a health care provider for treatment(s) and/or service(s) for which the Commission has not established a maximum allowable reimbursement, the insurance carrier shall:

1. develop and consistently apply a methodology to determine fair and reasonable reimbursement amounts to ensure that similar procedures provided in similar circumstances receive similar reimbursement;
2. explain and document the method it used to calculate the rate of pay, and apply this method consistently;
3. reference its method in the claim file; and
4. explain and document in the claim file any deviation for an individual medical bill from its usual method in determining the rate of reimbursement.”

The response from the carrier shall include, per Rule 133.307 (j) (1) (F), “.... if the dispute involves health care for which the Commission has not established a maximum allowable reimbursement, documentation that discusses, demonstrates, and justifies that the amount the respondent paid is a fair and reasonable rate of reimbursement in accordance with Texas Labor Code 413.011 and §133.1 and 134.1 of this title;”. The Carrier, in their methodology, reflects that an extensive review of Chronic Pain management Programs was performed for the state of Texas. From the information obtained, a ‘standard’ CPM program was, “...identified and evaluated at a ‘per modality’ rate...”. Based on the Carrier’s review, reimbursement would be \$116.00. Therefore, the \$125.00 hourly rate allows an additional \$9.00 per hour for medical management, etc. The Carrier has also submitted copies of example EOB’s to support that other providers have been reimbursed at the same rate or less.

The Provider has indicated that they have prepared a list that breaks down the daily treatment activities of injured employees and assigns a CPT code with a MAR. Also included was a study of what other carriers were paying for the CPT Code in dispute. Copies of recent decisions by Medical Dispute Resolution and the State Office of Administrative Hearings were also included as supportive documentation.

Section 413.011 (d) of the Act states, “Guidelines for medical services fees must be fair and reasonable and designed to ensure the quality of medical care and to **achieve effective medical cost control**. (bolded for emphasis). The law or rules are not specific in the amount of evidence that has to be submitted for a determination of fair and reasonable. The Provider’s example EOBs reflected that other carriers have reimbursed at \$175.00 an hour. CPT Code 97799-CP-AP reimbursement is not figured on a MAR value, but at fair and reasonable. The Provider’s study shows 45 examples with a payment range from \$88.00 per hour to \$175.00 per hr. The Provider has indicated that 16 Carriers’ reimbursed at \$175.00 per hr. However, that leaves 29 carriers paying a lesser hourly reimbursement. The Provider does not indicate if the study represents payments received or if it is just a canvass of payments made to other facilities. The amounts cover such a broad range (\$88.00 to \$175.00), it is difficult to determine how this discusses, demonstrates, or justifies the Provider’s fee.

The burden is on the Provider to prove that the fees requested are fair and reasonable. Based on the Carrier’s evidence of other programs accepting \$100.00 to \$125.00 per hour, and Section 413.011 (d) regarding effective cost control, no additional reimbursement is recommended.

MDR: M4-02-3718-01

The above Findings and Decision are hereby issued this 04th day of March 2003.

Lesa Lenart
Medical Dispute Resolution Officer
Medical Review Division

LL/ll